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GO DADDY GROUP, INC.
14455 NORTH HAYDEN ROAD
SUITE 219
SCOTTSDALE, AZ 85260

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| EXAMINER |
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DAYE, CHELCIE L

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| ART UNIT | PAPER NUMBER |
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2161

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/662,998 | MURASHIGE ET AL. | |
| | Examiner | Art Unit | |
| | Chelcie Daye | 2161 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/7/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is issued in response to applicant's amendment filed on May 15, 2006.
2. Claims 1-24 are presented. No claims were added and no claims were cancelled.
3. Claims 1-24 are pending.
4. Applicant's arguments filed May 15, 2006, have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claims 9 and 17 are rejected under 35 U.S.C. 112; second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 9 and 17, the term "substantially" renders the claim(s) indefinite because the term refers to an extent or degree of something, not an actual comparison. Examiner is unsure as to what degree of similarity the ranking needs to be, rendering the claims indefinite.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dooley (US Patent Application No. 20020035611) filed on December 28, 2000, in view of Feeley (US Patent Application No. 20040068460) filed on October 2, 2002.

Regarding Claims 1,9, and 17, Dooley discloses a process for increasing traffic flow to a Web site from one or more search engines, comprising the steps of:

A) a program receiving access to review a Web site ([0056], lines 36-40, Dooley)¹;

B) the program receiving one or more search phrases related to the Web site ([0046], lines 2-11, Dooley);

C) the program receiving one or more selected search engines to submit the Web site to ([0050], lines 8-11, Dooley); and

G) the program submitting the Web site to the selected search engines ([0050], lines 12-18, Dooley)². Though, Dooley does refer to the search engines performing some type of ranking (Fig.3; [0017], lines 20-22, Dooley), Dooley is silent with respect to the methods of how the rankings are determined by D) the program determining the ranking methodologies used by the selected search

¹ Examiner Notes: Java applets correspond to a program and the inclusion of the code corresponds to receiving access.

² Examiner Notes: Submitting corresponds to "identifying".

engines; E) the program analyzing the Web site using substantially similar ranking methodologies used by the selected search engines; F) the program automatically editing the code of the Web site to increase the expected traffic flow to the Web site from the selected search engines; H) repeating steps D) through G) to maintain an increased level of traffic flow to the Web site. On the other hand, Feeley discloses D) the program determining the ranking methodologies used by the selected search engines ([0023], lines 15-22, Feeley)³; E) the program analyzing the Web site using substantially similar ranking methodologies used by the selected search engines ([0026], lines 7-14, Feeley)⁴; F) the program automatically editing the Web site to increase the expected traffic flow to the Web site from the selected search engines ([0027], lines 1-9, Feeley)⁵; H) repeating steps D) through G) ([0025], lines 18-23, Feeley)⁶ to maintain an increased level of traffic flow to the Web site ([0027], lines 4-7, Feeley). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Feeley's teachings into the Dooley system. Dooley and Feeley are analogous art because they are from the same field of endeavor of Internet search engines and their rankings. A skilled artisan

³ Examiner Notes: Fig.2 is an example of a search engine and the item 38 shows the different web pages are ranked. Also, "determining the ranking method" is achieved by showing the calculations of the search listing.

⁴ Examiner Notes: Figs.3&4 show an example of a web site with "bid rankings" which are similar to those used by the search engine. As seen by Fig.3, the steps of listing the "current bid", "current position", "network high bid", and "new bid" is a consideration of detail for the ranking, which correspond to the act of analyzing the web site.

⁵ Examiner Notes: "Adjusting bid amounts" correspond to the editing of the web site and because of the adjusting of the bids, the ultimate goal is to maintain the position at the top of the search results, which would increase the expected flow of traffic.

would have been motivated to combine as suggested by Feeley at paragraph [0029], lines 1-8, in order to provide a convenient way for advertisers to maximize qualified consumer traffic to their web sites, and for search engines to increase their revenue stream.

Regarding Claims 2,10, and 18, the combination of Dooley in view of Feeley, disclose the process further including the step of listing suggested edits for an owner to manually edit the Web site ([0028], lines 1-11, Feeley)⁷.

Regarding Claims 3,11, and 19, the combination of Dooley in view of Feeley, disclose the process wherein the program resides on a third party server ([0041], lines 3-7, Dooley) accessible by an owner of the Web site ([0010], lines 6-8, Dooley).

Regarding Claims 4,12, and 20, the combination of Dooley in view of Feeley, disclose the process wherein the program resides on a personal computer ([0050], lines 5-8, Dooley) accessible by an owner of the Web site ([0010], lines 6-8,Dooley).

⁶ Examiner Notes: Fig.5 shows a detailed view of the loop (i.e. repeated steps) in order to maintain the traffic flow.

⁷ Examiner Notes: Fig.4 shows item 57, which is a drop down menu for the owner to choose a desired ranking (i.e. manual). Altering the ranking position corresponds with the editing of the web site.

Regarding Claims 5,13, and 21, the combination of Dooley in view of Feeley, disclose the process wherein the search phrases are entered by an owner of the Web site ([0025], lines 2-10, Feeley)⁸ and further comprising the step of the program determining additional search phrases ([0025], lines 10-14, Feeley).

Regarding Claims 6,14, and 22, the combination of Dooley in view of Feeley, disclose the process wherein the search phrases are entered by an owner of the Web site ([0025], lines 2-10, Feeley) and further comprising the step of receiving additional search phrases from a search phrase suggestion tool ([0025], lines 14-18, Feeley)⁹.

Regarding Claims 7,15, and 23, the combination of Dooley in view of Feeley, disclose the process wherein the analyzing the Web site step includes checking a spiderability of the Web site ([0024], lines 8-13, Feeley).

Regarding Claims 8,16, and 24, the combination of Dooley in view of Feeley, disclose the process wherein the analyzing the Web site step includes checking for search engine parsing problems in the Web site ([0048], lines 1-9, Dooley).

⁸ Examiner Notes: The owner/advertiser reads in the next keyword, which corresponds to the entering of the phrase.

⁹ Examiner Notes: The suggestion tool corresponds to multiplying the bid amount by the adjusted ratio, which results in an estimated bid amount.

Response to Arguments

In reference to claims 7, 15, and 23, the examiner would like to further explain that the objection was given as a suggestion. Since the term "spiderability" is not a real/known term, it is made up of two real world terms "spider" and "ability". The term spider as used within the application is a program that travels the Internet in order to locate Web documents and the term ability is the quality of being able to perform a certain action. Therefore, the examiner was merely trying to recommend for example putting a hyphen between the two distinct terms in order to make them as one (i.e. spider-ability). However, the objection to the claims has not been maintained and is hereby withdrawn.

Applicant argues the rejection made under 112, second paragraph, for the term "substantially", by stating MPEP 2173.05(b).

Examiner respectfully disagrees. Examiner does acknowledge the stated portion MPEP 2173.05(b) has been deemed correct for that particular court case. However, the case law does not pertain to the specified claims and limitations within the instant application, because of the formulation and phrasing of the claims language. Claims 9 and 17, limitation (E) of the instant application state "analyzing the Web site using substantially similar ranking methodologies used by ...". The term "substantially" is indefinite because the examiner is unclear if the ranking methods used for limitation (E)

are the same ranking methods used for the previous limitation (D). If so, it is unclear why the term "substantially" would need to be used. Also, if the ranking methods used within limitation (E) were different than those of the previous limitation, it would then not be "similar" and it would need to be more specifically disclosed. Therefore, the rejection is maintained and finalized.

Applicant argues, Dooley does not disclose "a program receiving access to review a Web Site".

Examiner respectfully disagrees. In reference to claims 1,4,9,12,17,and 20, as stated in the action above, Dooley discloses at [0056], lines 36-40, wherein the enhanced placement is attained by the inclusion software code elements (i.e. java applets), which are favorable by search engines. The meaning of "review" as defined by Merriam-Webster Online Dictionary, is an evaluation or a new appraisal. An enhance placement of a website is the improved/better placement of a website within a list. In order to be aware of the improvement of the placement of the website a "review" has to be performed on the website in order to determine the result. Also, as stated above the java applet (which is a specific example) corresponds to "a program" as mentioned throughout the claim language. To further elaborate, Dooley discloses at [0023], lines 1-19, wherein programs (generic) are made available for execution and access throughout the present invention. Therefore, Dooley does disclose "a program receiving access to review a Web Site."

Applicant argues, Dooley does not disclose the limitation of "the program not disclosed by Dooley's disclosure of a search engine since Dooley's search engine is not capable of performing steps A thru F".

Examiner respectfully disagrees. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "search engine performing steps A thru F") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). However, the disclosure of "the program" has been disclosed as stated above.

Applicant argues, Dooley's disclosure of "entering a search term into a search engine is different from the claimed limitation of the program receiving one or more selected search engines to submit the Web site to".

Examiner respectfully disagrees. In reference to claims 1,9, and 17, as stated in the action above, Dooley discloses at [0050], lines 8-11, wherein the user has access to multiple search engines (i.e. google, yahoo, netscape, etc.) and a search term is entered. As further stated at lines 12-18, the search engine identifies relevant websites and whichever the user chooses is then performed in accordance with the operation of

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the search engine. Therefore, the one or more possible search engines listed are selected depending upon where the user wants to browse, after results are returned the user decides on a website and the operation is performed within that search engine. As a result, Dooley does disclose "the program receiving one or more selected search engines to submit the Web site to".

Applicant argues, "submitting the Web site to the selected search engines" is not disclosed by Dooley's disclosure of a search engine finding registered websites.

Examiner respectfully disagrees. In reference to claims 1,9,and 17, as stated in the action above, Dooley discloses at [0050], lines 12-18, wherein as the search engine "identifies" relevant websites, it then returns the results list to the user. Soon after, the user selects a particular result (i.e. website) and proceeds to link the website with the search engine. The steps of identifying, selecting, and linking all correspond with the action of submitting the website to the selected search engine.

Applicant argues, Feeley does not disclose "the program of step D for determining the ranking methodologies used which the program must also be capable of performing steps A thru F".

Examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references

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individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As stated in the action above, Dooley, with reference to limitation A, discloses the program as used throughout. Also, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., program must also be capable of performing steps A thru F) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Lastly, Feeley discloses at [0023], lines 15-22, wherein a top three search result listing is shown, which corresponds to a ranking method.

Applicant argues, Feeley's "adjusting bid amounts, thereby adjusting a website's ranking with search engines" does not disclose the limitation of "editing the Web site".

Examiner respectfully disagrees. In reference to claims 1,9,and 17, as stated in the action above, Feeley discloses at [0027], lines 1-9, wherein adjusting bid amounts in order to give the web site an improved ranking, consists of determining an optimal keyword and assigning the bid amount for the keyword. If the bid amount for that particular word is most favorable, the ranking of the web site is improved. Resulting in the editing and adjusting of the website.

Applicant argues, Feeley's disclosure of "entering a Desired Position into an account web page, thereby adjusting the Web site's ranking with search engines" does not disclose the limitation of "editing the Web site".

Examiner respectfully disagrees. In reference to claims 2,10,and 18, Feeley discloses at [0028], lines 1-11, wherein the account owner has access to enter a desired position which is then displayed on an account web page. The entering and displaying of a specific desired position information corresponds to the editing of a web site.

Applicant argues, Dooley nor Feeley disclose "a program" capable of performing all the limitations in the independent claims.

Examiner respectfully disagrees. The combination of Dooley in view of Feeley discloses "a program" capable of performing all the limitations within the independent claims as stated within the action above.

Applicant argues, Feeley does not disclose the limitation of "the program determining additional phrases".

Examiner respectfully disagrees. In reference to claims 5,13,and 21, Feeley discloses at [0025], lines 10-25, wherein the program looks for another keyword in the account and loops back for the bid adjustments. Because the program is looking for and retrieving another (i.e. additional) keyword, discloses Feeley teaching "the program determining additional phrases".

Applicant argues, Feeley does not disclose the limitation of "a search phrase suggestion tool".

Examiner respectfully disagrees. In reference to claims 6,14,and 22, Feeley discloses at [0025], lines 2-18, wherein in order for the account owner to receive a top ranking in the search results, a keyword is read in and a determination is made as to whether the keyword is one of the 2100 most frequently searched keywords. A bid amount is then assigned/calculated and the program begins to look for another

keyword. The actual "suggestion tool" itself is the calculating and estimating of a bid amount for a specified keyword, however the search phrase corresponds to the keyword which was entered. As a result, Feeley discloses "a search phrase suggestion tool".

Applicant argues, Feeley does not disclose the limitation of "checking the spiderability of the Web site".

Examiner respectfully disagrees. In reference to claims 7, 15, and 23, Feeley discloses at [0024], lines 8-37, wherein the purpose of the spider program is to automatically retrieve data from search engines relating to keywords and storing the information. The spider programs collect 2100 frequently searched keywords and the searching of data in order to determine the high bid amount by aggregating adjustment ratios, correspond with "checking" or "making certain" that the task of the spider is carried out. As a result, Feeley discloses, "checking the spiderability of the Web site".

Applicant argues, lack of motivation to combine Dooley in view of Feeley and the references teaching away from each other.

Examiner respectfully disagrees. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to

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produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is stated in the action above. In response to applicant's argument that the Dooley and Feeley references teach away from each other, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Points of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chelcie Daye whose telephone number is 571-272-3891. The examiner can normally be reached on M-F, 7:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JEFFREY GAFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Chelcie Daye
Patent Examiner
Technology Center 2100
July 31, 2006

SA